

SENATE RECORD VOTE ANALYSIS

104th Congress
1st Session

Vote No. 22

January 17, 1995, 6:34 p.m.
Page S-998 Temp. Record

UNFUNDED MANDATES/Committee Jurisdiction on Points of Order

SUBJECT: Unfunded Mandate Reform Act of 1995 . . . S. 1. Glenn motion to table the committee amendment beginning on page 25, line 11.

ACTION: MOTION TO TABLE FAILED, 27-66

SYNOPSIS: Pertinent votes on this legislation include Nos. 15-21, 23-41, 43-45, and 47-61.

As reported by the Governmental Affairs Committee and the Budget Committee, S. 1, the Unfunded Mandate Reform Act of 1995, will create 2 majority (51-vote) points of order in the Senate. The first will lie against the consideration of a bill or joint resolution reported by an authorizing committee if it contains mandates and if Congressional Budget Office (CBO) cost estimates on those mandates are unavailable. The second point of order will lie against the consideration of a bill, joint resolution, motion, amendment, or conference report that will cause the total cost of unfunded intergovernmental mandates in the legislation to exceed \$50 million.

The committee amendment beginning on page 25, line 11, would strike the provision that would give the Governmental Affairs Committee in the Senate, and the Committee on Government Reform and Oversight in the House, the authority to make the final determination on whether proposed legislation contains a Federal mandate. It would also strike the provision providing that the levels of Federal mandates for a fiscal year will be determined based on the estimates of the respective budget committees. (The Budget Committee, which considered the bill sequentially in accordance with Budget Act requirements, struck these provisions with this one amendment).

During debate, Senator Glenn moved to table the amendment. The motion to table is not debatable; however, some debate preceded the making of the motion. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

NOTE: Following the failure of the motion to table, several amendments to the language proposed to be stricken were considered. During debate on those amendments, the committee amendment was modified from being a simple motion to strike to being a motion to strike and insert. The modification was to insert language that would require the Presiding Officer to consult with the Governmental Affairs Committee, to the extent practicable, on questions concerning the applicability of this Act to a pending bill,

(See other side)

YEAS (27)		NAYS (66)		NOT VOTING (7)	
Republicans (0 or 0%)	Democrats (27 or 61%)	Republicans (49 or 100%)	Democrats (17 or 39%)	Republicans (4)	Democrats (3)
Akaka	Abraham	Jeffords	Bingaman	Faircloth ⁻²	Bradley ⁻²
Baucus	Ashcroft	Kassebaum	Boxer	Gramm ⁻²	Kennedy ⁻²
Biden	Bennett	Kempthorne	Campbell	Hatfield ^{-2AN}	Pryor ⁻³
Breaux	Bond	Kyl	Conrad	Hutchison ⁻²	
Bryan	Brown	Lott	Dodd		
Bumpers	Burns	Lugar	Exon		
Byrd	Chafee	Mack	Harkin		
Daschle	Coats	McCain	Heflin		
Dorgan	Cochran	McConnell	Kerrey		
Feingold	Cohen	Murkowski	Lautenberg		
Feinstein	Coverdell	Nickles	Mikulski		
Ford	Craig	Packwood	Moseley-Braun		
Glenn	D'Amato	Pressler	Moynihan		
Graham	DeWine	Roth	Murray		
Hollings	Dole	Santorum	Rockefeller		
Inouye	Domenici	Shelby	Sarbanes		
Johnston	Frist	Simpson	Simon		
Kerry	Gorton	Smith			
Kohl	Grams	Snowe			
Leahy	Grassley	Specter			
Levin	Gregg	Stevens			
Lieberman	Hatch	Thomas			
Nunn	Helms	Thompson			
Pell	Inhofe	Thurmond			
Reid		Warner			
Robb					
Wellstone					

EXPLANATION OF ABSENCE:

1—Official Business
2—Necessarily Absent
3—Illness
4—Other

SYMBOLS:

AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

joint resolution, amendment, motion, or conference report. The inserted language would also provide that in the Senate, the levels of Federal mandates for a fiscal year will be determined based on the estimates made by the Budget Committee. Subsequently, the amendment was tabled (see vote No. 33).

Those favoring the motion to table contended:

This particular committee amendment was added by the Budget Committee. It would have the effect of increasing the authority of the Budget Committee in an area in which the Governmental Affairs Committee has more competence, and at the same time it would deny the Governmental Affairs Committee any jurisdiction in that area. More specifically, it would strike language in the bill that will make the Governmental Affairs Committee the final authority in any dispute as to whether language in proposed legislation constitutes an intergovernmental mandate. The Governmental Affairs Committee, which was formed in 1920 and carries as an explicit part of its mandate the responsibility of exercising jurisdiction over intergovernmental affairs and which exercises concurrent jurisdiction with the Budget Committee over budget matters, is, in our opinion, the proper committee to have this authority. Obviously, Members of the Budget Committee disagree because they passed this amendment.

We were rather surprised at this action. Our understanding was that they were going to support the language in the bill giving the Governmental Affairs Committee the ultimate authority to determine if a mandate exists, and the Budget Committee the ultimate authority to determine a mandate's cost. However, this amendment would strike all that language. In so doing, the amendment would not decrease the Budget Committee's authority, but increase it. This bill, unlike last year's bill, has been drafted to be an amendment to the Budget Act. For 20 years, ever since the creation of the Budget Committee and the passage of the Budget Act, the Chair has been required to defer to the Budget Committee in making its rulings on certain Budget Act points of order. Thus, by striking this language, the Budget Committee would effectively give itself sole jurisdiction in determining points of order under S. 1.

The Budget Committee should not be allowed to get away with this power grab. The Governmental Affairs Committee is better able to determine the existence of intergovernmental mandates. Therefore, we urge that this amendment be tabled.

Those opposing the motion to table contended:

Our colleagues have an inaccurate view of the Budget Committee's role in advising the Parliamentarian through the Presiding Officer. The Budget Committee in nearly all circumstances acts as a neutral conduit of information from the Congressional Budget Office. Budget estimates are always a tricky and controversial business, but they need to be made, and they need to be made under the same general assumptions if any order is going to be brought to the budget process. Recognizing this fact, the Congress created the Congressional Budget Office to provide a neutral, consistent means of estimating the costs of legislation. Many Senators are not always pleased with the assumptions that the CBO uses in making its estimates, but they must admit that it does not vary its assumptions for partisan purposes. All legislation, Republican or Democrat, receives the same treatment. For 20 years, whenever the Parliamentarian (through the Chair) has asked the Budget Committee for information so that it may make a ruling, the Chairman of the Committee, whether Republican or Democratic, has simply passed along CBO data. In those rare instances in which a CBO estimate has not been directly available, the Budget Committee has arrived at an estimate by extrapolating from other CBO data. In short, the Budget Committee does not exercise authority in determining the validity of points of order.

In contrast, the language in this bill will give the Governmental Affairs Committee tremendous power. Determining whether a mandate that is covered by S. 1 exists will not be done according to the cut-and-dry rules used by the CBO in making its estimates. S. 1 contains numerous exemptions on matters affecting constitutional or civil rights, emergency relief, other emergencies, national security, and so on. Questions will arise that will involve a lot more discretion than matching up CBO estimates with a bill's level of funding.

Under Senate practices, the Parliamentarian, through the Presiding Officer, decides on nearly all points of order. A few are submitted directly to the Senate to decide, and a few of the Budget Act points of order (as discussed) are obtained from the CBO through the Budget Committee, but the large majority are determined by the Parliamentarian under the precedents of the Senate. This practice is advisable. The Parliamentarian acts as a neutral judge, and renders his decisions swiftly. His decisions are instantly challengeable by any Senator, and can be put to a vote. We should not pass the dangerous precedent that a single Senate Committee can be given the final authority to deliberate and vote on whether a point of order is well taken. Therefore, we urge the tabling of this amendment.